

General Education Operational Framework to Address Disproportionality Due to Inappropriate Identification

Introduction

School divisions have used prereferral intervention processes since the 1970's as a step prior to special education referrals. This process has allowed instructional staff an opportunity to request help for a student who exhibits academic or behavioral problems that the teacher is unable to resolve. As many students experience academic or behavioral problems at some point in their educational careers, teachers should consider other options before a special education referral is made. The prereferral intervention or problem-solving process is such a strategy because it assists teachers and students with problems in the context of the general education classroom.

The goal of a prereferral intervention or problem-solving process system is to ensure that all students have access to a quality education and the general education curriculum. Additionally, all students are to be held to general education standards with reasonable supports necessary to succeed in the general education setting, if at all possible. Another goal of the school-based problem-solving team is to improve knowledge and augment the skills of school-based staff to adequately address students' academic and behavioral needs. The process recognizes that many variables affect learning.

The Individuals with Disabilities Education Act of 2004 (IDEA) mandates that prior to, or as part of the referral process for special education and related services, the student was provided appropriate high-quality, research-based instruction in reading, math and English as a Second Language in the general education setting by qualified personnel. This mandate sends a message in policy that a student should not be classified as having a disability if the problems are primarily the result of inadequate instruction.

Prereferral Intervention Process

The general education prereferral intervention or problem-solving process is a school-based mechanism and strategy where instructional staff may request help with a child who exhibits an academic, behavioral or communication problem. It is designed to enable school personnel to meet the needs of individual students within the school who are having difficulty in the educational setting. The prereferral intervention process (or problem solving process) is a systematic effort by a school-based team to meet and discuss a general educator's and/or parent's problems or concerns about a student and provide strategies or interventions that he or she should implement within the general education classroom. The emphasis of this process should be to provide supports necessary to maintain the student in the general education classroom, if at all possible.

At the core of the general education intervention process is collaborative problem solving among teachers, related service personnel, family members and administrators who are working to provide the instructional staff with support and strategies designed to improve achievement for all students. (For example, the Student Assistance or school-based RtI team may serve the same function). The school-based problem-solving team has the responsibility to review any problems – academic/developmental, behavioral, medical, social/emotional, or communicative – interfering with the child's performance in school,

General Education Operational Framework to Address Disproportionality Due to Inappropriate Identification

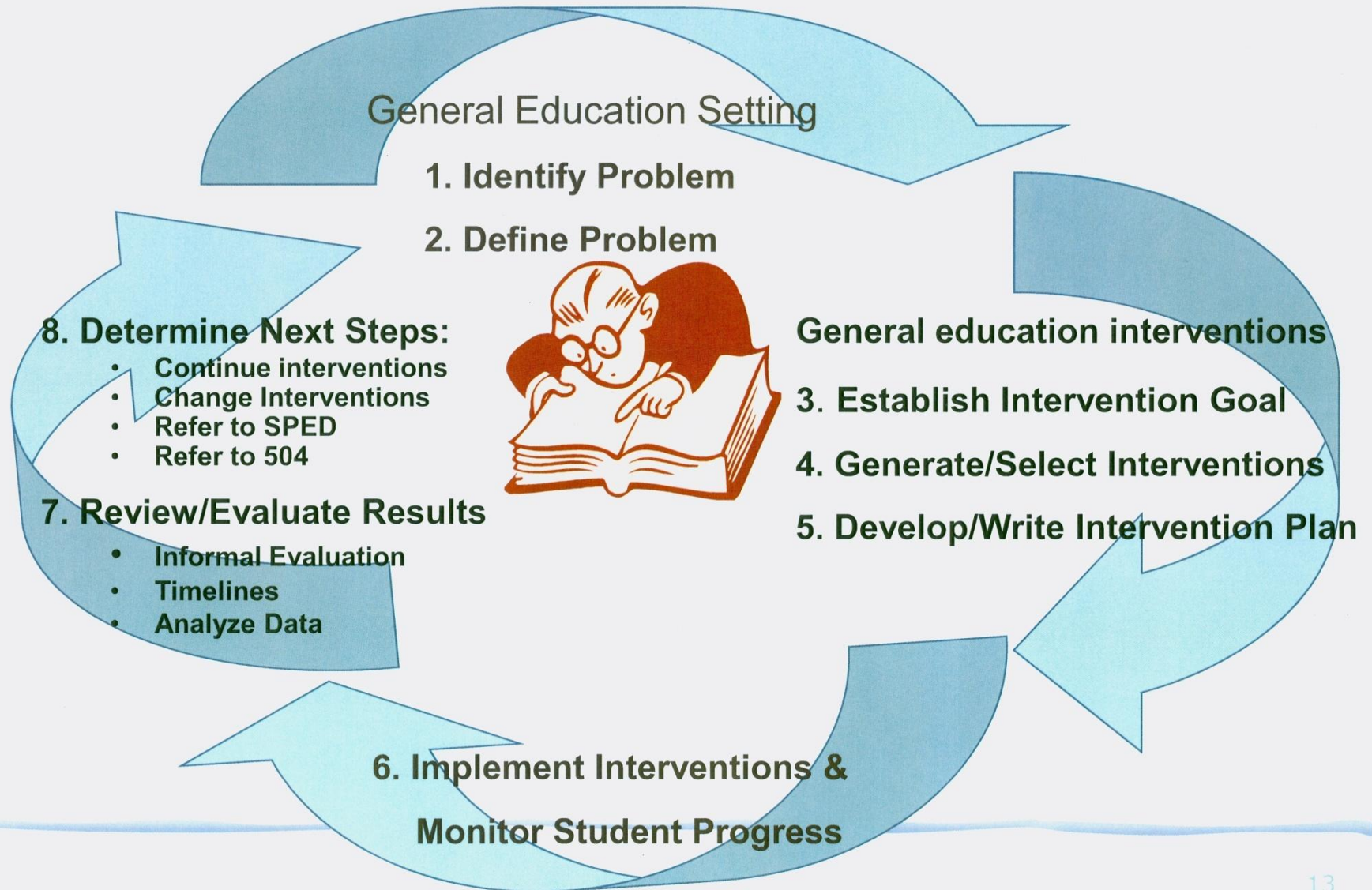
brainstorm solutions, make recommendations to meet the child's needs, and monitor/review the results of the recommendations. These actions are considered prior to referring a student suspected of having a disability, but may not needlessly delay a student suspected of having a disability from being referred for evaluation for special education and related services: *The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services. (34 CFR 300.302)*

The school-based problem-solving team members and the teacher generally consider a variety of factors that may be at the core of the problem, including the curriculum, instructional materials, instructional practices, and teacher perceptions. The problem-solving meeting facilitates the steps that result in the implementation of accommodations, services and interventions (as appropriate) that will enable the student to be successful in the general education setting. The options to be considered exist along a wide continuum of support, ranging from minimal accommodations to intensive interventions that may be available within the public school system or located elsewhere in the community. In reviewing the student's performance, the team may use a process, such as Response to Intervention (RtI), based on the student's response to scientific, research-based interventions or other alternative, research-based procedures. (Source: 34 CFR 300.307)

Documentation from the problem-solving process should report initial learning, academic, communication and/or behavioral concerns, interventions implemented, and the length of time each intervention was attempted, as well as outcomes of each intervention. Additionally, individual student progress reports are maintained that detail the specific steps and timeline that contributed to any progress. If the student has not made adequate progress after an appropriate period of time during the implementation of the interventions, the team refers the student for an evaluation to determine if the student needs special education and related services. (Source: 34 CFR 300.309)

The problem-solving process model is represented in the visual diagram on the next page. This problem-solving process model emphasizes the general education instructional setting as the starting point for a systemic approach to support students in their learning and academic development.

Problem Solving Model Approach



General Education Operational Framework to Address Disproportionality Due to Inappropriate Identification

Addressing Over-Representation

The process of determining a student's eligibility for special education and related services is initiated at the school level. The referral states why an evaluation is requested and the efforts that have been made to address the concerns. IDEA requires that schools have in place appropriate procedures to determine if the student who is referred for special education services is a child with a disability and requires special education and related services to achieve and progress appropriately in the school curriculum.

Disproportionate representation or disproportionality refers to the over and/or under representation of minorities in special education programs. The overrepresentation of racially, culturally, ethnically and linguistically diverse students in special education is well documented and continues to be an area of emphasis for the U.S. Department of Education and the Office of Special Education Programs (OSEP). Over-representation or disproportionate representation in special education occurs when:

- A group's membership in special education and related services is larger than the percentage of that group in the educational system
- A group's membership in special education and related services is larger than the percentage of that group within a given disability category (e.g., learning disability, emotional disability, intellectual disability, etc.)

It is important to note that in Virginia and across the country, students have been inappropriately referred and erroneously determined to have a disability that required special education and related services when, in fact they did not. This has happened repeatedly and primarily to African American students in many districts across the country and has resulted in a disproportionate percentage of group membership in special education.

Under the OSEP guidelines, disproportionate representation that is the result of inappropriate identification is determined through a two-step process: (1) an analysis of data, and (2) a review of individual student records to determine compliance with identification policies and procedures. As required, the Virginia Department of Education (VDOE) gathers and examines school divisions' data to determine if disproportionate representation due to inappropriate identification of racial and/or ethnic groups exists. School divisions identified with Disproportionate Representation that is the Result of Inappropriate Identification are listed in the *Annual Performance Report* (APR) and in an annual Report to the Public. Information is reported in two categories:

- Disproportionate representation of racial and ethnic groups in special education and related services that is the result of inappropriate identification (APR, Indicator 9)
- Disproportionate representation of racial and ethnic groups in specific disability categories that is the result of inappropriate identification (APR, Indicator 10)

General Education Operational Framework to Address Disproportionality Due to Inappropriate Identification

The VDOE provides technical assistance to local school divisions in addressing over-representation in the following ways:

- Provision and analysis of data regarding children identified for special education disaggregated by race and disability
- Provision of critical questions and checklists for examination of data, policies, practices and procedures

The Virginia Department of Education (VDOE) developed and continues to use a prereferral checklist to gather information and determine if students are appropriately being referred for consideration as a student having a disability and being eligible for special education and related services.

General Education Operational Framework to Address Disproportionality Due to Inappropriate Identification

Preliminary Determination of Disproportionate Representation that is the Result of Inappropriate Identification

Student's Name: _____ DOB: _____
 Race/Ethnicity: _____ School Division: _____
 Completed by: _____ Date: _____

Please check a yes or no response to each statement. These statements address the intervention process prior to consideration for special education referral.

YES	NO	
<input type="checkbox"/>	<input type="checkbox"/>	1. The prereferral/problem-solving team reviewed the student's records, achievement scores and other performance evidence.
<input type="checkbox"/>	<input type="checkbox"/>	2. Information in the student's records, achievement scores and/or group standardized data and state assessments indicated academic or behavior problems that interfered with the student's performance.
<input type="checkbox"/>	<input type="checkbox"/>	3. A review of existing student data indicated a concern in at least one of the following areas: (Check all that apply) <input type="checkbox"/> (a) Health/Medical <input type="checkbox"/> (b) Frequent absences/attendance concerns <input type="checkbox"/> (c) Discipline/behavior <input type="checkbox"/> (d) Frequent school transfers <input type="checkbox"/> (e) History of poor grades <input type="checkbox"/> (f) Grade retentions <input type="checkbox"/> (g) Speech/language <input type="checkbox"/> (h) Below average performance-grade/instructional level
<input type="checkbox"/>	<input type="checkbox"/>	4. Teacher concerns were consistent with problem(s) identified in the student's records and/or reports.
<input type="checkbox"/>	<input type="checkbox"/>	5. Parent expressed concerns with child's learning/academic performance.
<input type="checkbox"/>	<input type="checkbox"/>	6. Information about the student's environmental, cultural, ESL skills and economic backgrounds were documented and considered as factors in the learning difficulties.
<input type="checkbox"/>	<input type="checkbox"/>	7. Research or evidence based intervention strategies were identified and implemented that matched the student instructional/behavioral problems. Please name the strategy: _____
<input type="checkbox"/>	<input type="checkbox"/>	8. The intervention strategies were monitored, modified (as appropriate), and attempted over a specific period of time (i.e. 4-6 weeks). Results of the intervention: _____
<input type="checkbox"/>	<input type="checkbox"/>	9. Accommodations/modifications were made in the general curriculum to facilitate the student's participation. Identify accommodation/modification: _____
<input type="checkbox"/>	<input type="checkbox"/>	10. The student's academic/behavioral problem, as documented, was consistent and resulted in a lack of progress and responsiveness to instruction that supported the decision for special education referral.

General Education Operational Framework to Address Disproportionality Due to Inappropriate Identification

YES	NO	
<input type="checkbox"/>	<input type="checkbox"/>	<p>11. The referral decision was based upon information from a variety of sources. (Check all that apply).</p> <p> <input type="checkbox"/> Parent input/information provided by parent <input type="checkbox"/> Assessment reports (cognitive, academic, emotional, etc.) <input type="checkbox"/> Student observation reports <input type="checkbox"/> Aptitude/achievement tests <input type="checkbox"/> Operational criteria worksheets <input type="checkbox"/> State assessments <input type="checkbox"/> Observations <input type="checkbox"/> RtI </p>
<input type="checkbox"/>	<input type="checkbox"/>	<p>12. The determinant factor in the referral decision for the student was in at least one of the following: (Check one)</p> <p> <input type="checkbox"/> Significant academic deficits <input type="checkbox"/> Significant behavioral difficulties <input type="checkbox"/> Persistent performance difficulties in multiple areas <input type="checkbox"/> Significant lack of progress and/or unresponsiveness to intervention <input type="checkbox"/> Significant speech/language deficits </p>
<input type="checkbox"/>	<input type="checkbox"/>	<p>13. The lack of instruction in reading(phonemic awareness, phonics, reading fluency, vocabulary and reading comprehension) was ruled out as a determinate factor in the referral decision.</p>
<input type="checkbox"/>	<input type="checkbox"/>	<p>14. The lack of instruction in math (number/number sense, measurement, computation/estimation, and problem-solving) was ruled out as a determinate factor in the referral decision.</p>
<input type="checkbox"/>	<input type="checkbox"/>	<p>15. Limited English proficiency was ruled out as a determinate factor in the referral decision.</p>

General Education Operational Framework to Address Disproportionality Due to Inappropriate Identification

School Level Record Review

The Virginia Department of Education (VDOE) developed and continues to use a record review process to gather information and determine if school divisions appropriately identified students as having a disability and being eligible for special education and related services. The Student Record Review form for Indicator 9 is used to conduct a record review of the initial eligibility referrals for special education consideration for all students (ages 6-21).

For INDICATOR 9: Disproportionate Representation due to Inappropriate Identification: Race/Ethnicity, the process is as follows:

Schools are to have procedures to process all referral requests for a child suspected of having a disability in a timely manner. The school-based team is expected to review records, and other performance evidence of the child being referred, in order to make recommendations to meet the child's educational and behavioral needs. One member of the team must be knowledgeable about alternative interventions and about procedures required to access programs and services that are available to assist with all students' educational needs. (Source: 34 300.507)

Inappropriate identification for special education services may be considered when a student referral:

- Lacks documentation of an established review of records and other performance evidence of any learning, behavior, communication or developmental concerns
- Lacks documentation of the general education intervention strategies implemented for the area of concern, and a reasonable period of time for application of the strategies and timelines of implementation used with the student
- Lacks a written summary review of the student's records – health, attendance, discipline, school transfers, previous diagnostic evaluations, anecdotal records, and assessment data, such as standard or achievement test scores and grades
- Lacks consideration of cultural/linguistic (i.e. English Language Learners) and environmental factors that might be contributing to school difficulties
- Lacks family information
- Lacks data/documentation from a variety of sources

Inappropriate identification may result when eligibility decisions lack:

- Comprehensive data across all areas including academic, cognitive, adaptive

General Education Operational Framework to Address Disproportionality Due to Inappropriate Identification

emotional/behavioral, language, social and motor skills

- Consideration of information provided by parent(s) and multiple data sources, including intervention outcome data, in determining and planning for a more intensive level of service
- Evidence of appropriate instruction in reading, including the essential components of reading instruction (explicit and systematic instruction in phonemic awareness, phonics, vocabulary development, reading fluency, including oral reading skills, and reading comprehension strategies)
- Evidence of appropriate instruction in math (i.e. number/number sense, computation/estimation, measurement, geometry, probability/statistics, and patterns, functions and algebra)

The prereferral intervention or problem-solving process should rule out other factors that might contribute to behavioral, communication and academic difficulties, as well as substantiate that the student's academic, communication or behavioral problem is consistent and pervasive and reflects a possible disability rather than a cultural, language difference, and/or economic disparity. The school-based pre-referral intervention team ultimately identifies those students for whom learning, communication and/or behavioral difficulties persist in spite of implemented and monitored interventions, and recommends the formal evaluation process for special education consideration. Please note that the use of interventions cannot delay referring the student suspected of having a disability from the evaluation process.

Referrals may be made by any source and at any time during the problem-solving process. Referral information identifies specific areas to be included in the evaluation. A variety of assessment tools and strategies are to be used to gather relevant functional, developmental, and academic information about the child. This includes information provided by the parent, and information related to enabling the child to be involved in and progress in the general curriculum and that may assist in determining whether the child is a child with a disability.

The multifaceted assessments reflect data that provides measurements according to the established disability eligibility criteria. Specific assessments are selected and administered in the determination for special education services. No single measure or assessment is used as the sole criterion for determining whether a student is a child with a disability and for determining an appropriate educational program for the student.

For INDICATOR 10: Disproportionate Representation due to Inappropriate Identification – Specific Disability Categories

Special education eligibility requires the application of a four-part documentation of:

General Education Operational Framework to Address Disproportionality Due to Inappropriate Identification

- (1) The presence of an impairment, (2) determination of need for special education and related services, (3) identification of a disability, and (4) explanation of the student's present educational needs.

After the completion of the evaluation, the eligibility group meets to determine whether the evaluation results indicate the existence of a disability, whether the student is eligible for special education and related services, and what the student's educational needs are. All parts must be confirmed through the assessment process in order for a student to be determined eligible for special education and related services.

It is important to note that the VDOE and OSEP have directed particular emphasis to the designated disability categories of Autism, Emotional Disability, Intellectual Disability, Other Health Impairment, Specific Learning Disability, and Speech or Language Impairment (Communication). The eligibility group provides a written summary as the basis for the eligibility determination using the established criteria and definitions in the current state regulations. For all students suspected of having a disability, local school divisions must use the definitions of the disability categories in the current state special regulations and the criteria for eligibility adopted by the Virginia Department of Education as noted in 8VAC20-81, *Special Education Regulations*, effective July 7, 2009.

The definitions are provided below:

Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, which adversely affects the child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines and unusual responses to sensory experiences. Autism does not apply if a student's educational performance is adversely affected primarily because the student has an emotional disturbance. A child who manifests the characteristics of autism after age three could be identified as having autism if the criteria in this definition are satisfied. (8VAC20-81-10)

Emotional disability means a condition exhibiting one or more of the following characteristics over a *long period of time* and to a marked degree that adversely affects a student's educational performance: (34 CFR 300.8)(c)(4)) 1) An inability to learn that cannot be explained by intellectual, sensory or health factors; 2) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers; 3) Inappropriate types of behavior or feelings under normal circumstances; 4) A general pervasive mood of unhappiness or depression; 5) A tendency to develop physical symptoms or fears associated with personal or school problems. Emotional disability includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is

General Education Operational Framework to Address Disproportionality Due to Inappropriate Identification

determined that they have an emotional disability as defined in the Virginia regulations. (8VAC20-81-10)

Intellectual disability (formerly known as “mental retardation”) means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a child’s educational performance. (8VAC20-81-10)

Other health impairment means having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, and sickle cell anemia and Tourette syndrome that adversely affects a child’s educational performance. (8VAC20-81-10)

Specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell or do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities; of intellectual disabilities; of emotional disabilities; of environmental, cultural, or economic disadvantage. (8VAC20-81-10)

Speech or language impairment means a communication disorder, such as stuttering, impaired articulation, expressive or receptive language impairment, or a voice impairment that adversely affects a child’s educational performance. (8VAC20-81-10)

The VDOE, Division of Special Education and Student Services have developed guidance on evaluation and eligibility for the Special Education Process. Please refer to this document for sample eligibility process forms and disability worksheets. Use of these forms will be helpful in documenting your individual student records for Indicator 9 and Indicator 10. You can access the guidance document and forms at www.doe.virginia.gov/VDOE/sess.